

European crowdfunding service providers (ECSP) for business

2018/0048(COD) - 11/09/2020 - Council position

The Council adopted its position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on European crowdfunding service providers for business.

The proposed regulation is part of a package of measures aimed at completing the Capital Markets Union (CMU), which also includes a [proposal for a directive](#) of the European Parliament and of the Council amending directive 2014/65/EU on markets in financial instruments.

The objective of the proposed Regulation and Directive is to reduce the fragmentation of the legal framework applicable to crowdfunding services in order to ensure the proper functioning of the internal market in such services while enhancing investor protection as well as market efficiency and contributing to establishing the CMU.

Subject matter and scope of the application

The Council's position creates a single harmonised regime applicable to all crowdfunding service providers falling within the scope of this Regulation. It establishes uniform requirements for the following: (a) the operation and organisation of crowdfunding service providers; (b) the authorisation and supervision of crowdfunding service providers; (c) transparency and marketing communications in relation to the provision of crowdfunding services in the Union.

The Regulation shall not apply to project owners that are consumers or to offers of crowdfunding whose amount, calculated over a period of 12 months, exceeds EUR 5 million. In addition, a temporary derogation of 24 months would be introduced for those Member States where the threshold for drawing up a prospectus is below EUR 5 million.

The Council's position also provides for a transitional period of up to 24 months after its entry into force, during which crowdfunding services may (unless and until they are granted an authorisation under this Regulation) continue, in accordance with the applicable national law, to provide crowdfunding services which are included within the scope of this Regulation.

The scope of the application shall be extended to include admitted instruments for crowdfunding purposes (shares of limited liability companies). The scope of the services shall also be extended to include individual portfolio management of loans.

Organisational and operational requirements

The proposed Regulation includes a number of investor protection measures, including governance, risk assessment, duty of care, the extent of discretion available to providers of crowdfunding services when offering individual loan portfolio management, complaint handling, conflicts of interest, outsourcing, client asset safekeeping and provision of payment services, and prudential safeguards.

Accreditation

The Council's position provides for the establishment of a harmonised EU-wide framework entrusting the competent national authorities with the granting of licensing and supervision. The competent authorities

granting authorisation shall also supervise crowdfunding service providers and may withdraw authorisation under certain specific conditions.

Certain tasks shall remain with the European Securities and Markets Authority (ESMA), including the preparation of implementing measures, binding mediation and data collection. ESMA shall keep a register of all authorised crowdfunding service providers and may request information to ensure that authorisations are granted in a consistent manner.

The proposed regulation defines the investigative and supervisory powers that shall be given to the competent authorities. It includes measures on professional secrecy and data protection.

Investor protection

Crowdfunding service providers shall provide their clients with information that is fair, clear and not misleading. The Regulation includes measures on disclosure of credit scores, testing of entry knowledge and simulation of loss-bearing capacity, pre-contractual cooling-off period, key investment information sheet, bulletin boards and access to records.

To ensure adequate investor protection of different categories of investors participating in crowdfunding projects while facilitating investment flows, the Council position distinguishes between sophisticated and non-sophisticated investors, and introduces different levels of investor protection safeguards appropriate for each of those categories.

Sanctions

The Council's position provides for minimum penalties and administrative measures in the event of infringement of the Regulation. It also includes provisions on the right of appeal, the publication of decisions and the reporting of penalties and administrative measures to ESMA.

Lastly, it requires the Commission to submit a report to the European Parliament and the Council within 36 months of its entry into force.